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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/678,254	10/06/2003	Takeshi Kajiyama	243658US2S	1983
22850	7590	06/24/2009		
OBLON, SPIVAK, MCCLELLAND MAIER & NEUSTADT, P.C. 1940 DUKE STREET ALEXANDRIA, VA 22314			EXAMINER SOFOCLEOUS, ALEXANDER	
			ART UNIT	PAPER NUMBER
			2824	
			NOTIFICATION DATE	DELIVERY MODE
			06/24/2009	ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

patentdocket@oblon.com  
oblonpat@oblon.com  
jgardner@oblon.com

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/678,254	KAJIYAMA ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	ALEXANDER SOFOCLEOUS	2824	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-77 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 1-77 are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____.                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date ____.  | 6) <input type="checkbox"/> Other: ____.                          |

### **DETAILED ACTION**

1. This action is responsive to the following communications: the Application filed October 06, 2003.
2. Claims 1-77 are pending in the case. Claims 1, 19, 34, 37, 38, 39, 40, 41, 42, 43, 44, 45, 55, 64, 65, 69, and 71 are independent claims.

### ***Election/Restrictions***

3. Restriction to one of the following species is required under 35 U.S.C. 121:

**Species I**, drawn to the embodiment of Fig. 22 directed to an MRAM with a passivation layer (which appears to most correspond to claims 1-9, 19-25, 34-36).

**Species II**, drawn to the embodiments of Fig. 17A and Fig. 17B directed to packaging of an MRAM (which appears to most correspond to claims 10-18, 26-33, and 37-44).

**Species III**, drawn to the embodiment of Fig. 3-5, and 7 directed to a data copying device (which appears to most correspond to claims 45-63 and 69-77).

**Species IV-a**, drawn to the embodiment of Fig. 6 directed to the data copying computer program on a recording medium (corresponding to claims 64 and 66-68).

**Species IV-b**, drawn to the embodiment of Fig. 6 directed to the data copying method (corresponding to claims 69, 70, and 72-77)

**Species V-a**, drawn to the embodiment of Fig. 10 directed to the data copying computer program on a recording medium (corresponding to claim 65).

**Species V-b**, drawn to the embodiment of Fig. 10 directed to the data copying method (corresponding to claim 71).

As currently presented, it does not appear that any claims are generic.

Claims 10-18 and 26-33 of Species II depend from independent claim 1 and 19 (of Species I), respectively, and if Species II is elected, then claims 1 and 19 will be included with the elected group.

Although the difference between Species IV-a and Species IV-b is the preamble, the preamble of Species IV-a (reciting a recordable medium with software) is likely to raise different non-prior art issues under 35 U.S.C. 101. Similarly, Species V-a and V-b differ in the preamble, but the preamble of the Species V-a (reciting a recordable medium with software) is likely to raise different non-prior art issues under 35 U.S.C. 101 and/or 112. Therefore, restriction between Species IV-a and IV-b, and between Species V-a and V-b is considered proper.

The species are independent or distinct because as disclosed the different species have mutually exclusive characteristics for each identified species. In addition, these species are not obvious variants of each other based on the current record.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable.

There is an examination and search burden for these patentably distinct species due to their mutually exclusive characteristics. The species require a different field of search (e.g., searching different classes/subclasses or electronic resources, or employing different search queries); and/or the prior art applicable to one species would not likely be applicable to another species; and/or the species are likely to raise different non-prior art issues under 35 U.S.C. 101 and/or 35 U.S.C. 112, first paragraph.

**Applicant is advised that the reply to this requirement to be complete must include (i) an election of a species to be examined** even though the requirement may be traversed (37 CFR 1.143) **and (ii) identification of the claims encompassing the elected species**, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

The election of the species may be made with or without traverse. To preserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out supposed errors in the election of species requirement, the election shall be treated as an election without traverse. Traversal must be presented at the time of election in order to be considered timely. Failure to timely traverse the requirement will result in the loss of right to petition under 37 CFR 1.144. If claims are added after the election, applicant must indicate which of these claims are readable on

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the elected species.

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the species unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other species.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which depend from or otherwise require all the limitations of an allowable generic claim as provided by 37 CFR 1.141.

### ***Conclusion***

When responding to this office action, applicants are advised to provide the examiner with the line numbers and page numbers in the application and/or references cited to assist the examiner in locating appropriate paragraphs.

A shortened statutory period for response to this action is set to expire **ONE MONTH** and zero days from the date of this letter. Failure to respond within the period for response will cause this application to become abandoned (see MPEP 710.02(b)).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alexander Sofocleous whose telephone number is **571-272-0635**. The examiner can normally be reached on 7:00am - 4pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's

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supervisor, Richard Elms can be reached on 571-272-1869. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Tuan T. Nguyen/  
Primary Examiner, Art Unit 2824  
6/19/09

AGS